Michigan House Ethics and Elections Committee
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HB 4313 "Lobbying Revolving Door"
HB 4315 "Conflict of Interest"
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Mr. Chair and Committee Members, my name is Lynn Jondahl and I reside in Okemos, MI. I appreciate this opportunity to comment on the two bills you have scheduled for committee consideration today. Although I chair the State Board of Ethics and the Michigan Campaign Finance Network and am employed by the Michigan Prospect, I am not authorized to testify on behalf of any of these organizations. I am here as an individual representing my own perspective and interest.

HB 4313: I believe a very strong case can be made for amending the Michigan lobbying law to enact a prohibition against former legislators, other elected officials and appointed departmental heads from going to work as lobbyists immediately upon leaving public office. Providing for a "cooling off period" before a former official can become a lobbyist protects against officials succumbing to inappropriate temptations to write laws or contracts with greater concern for personal gain than for public service. Such provisions also enhance the public trust in their government – a commodity in too short a supply.

As you consider this legislation Michigan is among the minority of states with no revolving door restrictions. According to an analysis conducted by the Center for Public Integrity in 2005, across the country more than 1,300 ex-lawmakers were registered as lobbyists. The most legislators turned lobbyists was in Texas with 70. Florida was second with 60 former legislators and Minnesota and Illinois came in with 50 each. Missouri had 46, Massachusetts and Michigan had 43 each and Georgia 41.

25 states have either a one (6) or two (19) year moratorium. One state has a six-month moratorium.

The length of a moratorium is largely arbitrary. I am of the opinion that a two-year prohibition more effectively addresses the need for an effective "cooling off period." A key concern with the bill needs to be whether the definition of "lobbying" is broad enough.

According to PA 472 of 1978:

2) "Lobbying" means communicating directly with an official in the executive branch of state government or an official in the legislative branch of state

government for the purpose of influencing legislative or administrative action. Lobbying does not include the providing of technical information by a person other than a person as defined in subsection (5) or an employee of a person as defined in subsection (5) when appearing before an officially convened legislative committee or executive department hearing panel. As used in this subsection, "technical information" means empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related.

(3) "Influencing" means promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies, or analysis."

This definition is quite narrow in defining lobbying as "communicating directly with an official...". Presumably this would allow broad license for a former public official to act behind the scenes for a private interest as long as she/he did not communicate directly with a public official.

Another potential concern I would encourage you to examine is whether the law should include senior legislative and executive research and issues staff in the "revolving door" prohibition. They are subject to the same temptations and have access to the same insider information that legislators, other elected officials and appointed department heads have.

HB 4315: PA 318 of 1968 is the Act being amended by this bill. The Act has an interesting history. Among the provisions of the Act was the creation of a Legislative Committee on Conflict of Interest – 3 members of the House and 3 members of the Senate. This Committee is empowered to provide advisory opinions to legislators wishing to know whether acting on a particular matter is a conflict of interest. This act was repealed by PA 227 of 1975. This was a comprehensive Act on governmental ethics. However, the Supreme Court of Michigan found this Act to be unconstitutional on technical grounds (Article IV, Sec. 24, "No law shall embrace more than one object..."). Therefore, the Conflict of Interest act continues to be on the books. However, no legislature since the 1968 enactment of PA 318 has ever appointed the 6 member legislative committee on conflict of interest. An Attorney General's opinion in 1989 ruled that "no remedy is available to compel the Legislature to appoint members to the Committee on Conflict of Interest established by 1968 PA 318."

PA 318 is the legislature's implementation of Article IV, Section 10 of the Michigan Constitution. "No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation." This bill requires a legislator to recuse her/himself from voting on legislation in which she/he has a substantial conflict of interest. This recusal provision is a new and important addition to the conflict of interest provisions of law.

The State Ethics Act that creates the Michigan Board of Ethics has limited jurisdiction. It applies to executive branch (civil service) employees and executive

appointees. It has no jurisdiction over legislators or legislative staff. The Act spells out 7 prohibitions of conduct. The seventh addresses conflict of interest and reads: "...a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificat3es, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest."

In 1999 Michael A. Lawrence, Professor of Law at Detroit College of Law at Michigan State University, prepared a report for the Michigan Law Revision Commission. This Commission is created by and reports to the Legislature. This report on "The Proposed Government Ethics Act of 1999" proposed a comprehensive ethics act that covers all public persons – elected, appointed, legislative, executive and judicial. One of the key findings in the report reads: "Ethics laws in Michigan are inadequate in several key respects. First, they do not elucidate a clearly defined, comprehensive set of conflict-of-interest and revolving-door standards; second, they fail to require even minimal transactional disclosure by public officials and employees of potential conflicts; and third, they do not provide for a strong and independent Ethics Board to enforce the statutes. This ethics 'triad' – a clearly defined list of proscribed activities, disclosure, and a strong, independent Ethics Board – is the backbone to an effective ethics law." Professor Lawrence offers a proposed Act to address these deficiencies.

The sponsors of HB 4313 and 4315 have taken a significant step in the direction of addressing the inadequacies identified in the Law Revision Commission report. In HB 4313 they propose a revolving-door standard and, in HB 4315, propose a conflict-of-interest standard that includes a transactional disclosure provision.

These bills do not propose the creation of an independent ethics board, a proposal you may want to consider at some time. It is my opinion that the complexities of ethics demands are such that individual legislators as well as other public servants are well-served by having the ability to turn to an ethics board with requests for advisory opinions on potential matters of conflict. This is a major service for employees and for the public which is served by the State Board of Ethics. I believe a legislator who is faced with the decision of whether he/she has a "substantial conflict of interest" would welcome the ability to ask for a ruling on this matter.

HB 4315, page 1, lines 7 and 8 and page 2, line1, states, "IF THE LEGISLATOR HAS A SUBSTANTIAL CONFLICT OF INTEREST, THE LEGISLATOR SHALL STATE THAT FACT ON THE RECORD." This is a valuable provision in that public trust in government and governmental officials is enhanced by compelling prompt disclosure whenever a public servant must recuse her/himself from a vote or decision. It would be helpful, I believe, to spell out what this statement should include and to whom it is made in order to be "ON THE RECORD." In the Supreme Court advisory opinion on the constitutionality of PA 227 of 1975, which I mentioned earlier, the Court said: "disclosure assists in preserving the integrity of the political process. It is legitimate for the Legislature to provide a means for effectively investigating possible conflicts of interest. Disclosure requirements promote integrity, fairness and public confidence in

government as well as providing the citizens with information concerning an officeholder's integrity and fitness for office." This underscores the importance of this reporting provision in HB 4315 and the need for clarity about what this report entails.

Thank you.